"RESTRUCTURING TRIAL SYSTEM IN INDIAN CRIMINAL JUSTICE SYSTEM: AN ANALYTICAL STUDY"

Synopsis

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TITLE

Restructuring trial system in Indian criminal justice system: An analytical study

INTRODUCTION

India has a well-established statutory, administrative, and judicial framework for criminal trials. Indian Penal laws are primarily governed by 3 Acts:

1. The Code of Criminal Procedure, 1973 (Cr.P.C.)[1];

2. The Indian Penal Code, 1860 (IPC)[2];

3. The Indian Evidence Act, 1872 (IEA)[3].

Cr.P.C. is a comprehensive and exhaustive procedural law for conducting a criminal trial in India, including the manner for examination of witnesses, interrogation of accused, arrests, safeguards, and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial in India, is primarily, except as otherwise provided, governed by The Code of Criminal Procedure, 1973 (Cr.P.C.). IPC is the primary penal law of India, which is applicable to all offences, except as may be provided under any other law in India. IEA is a detailed treaty on the law of "evidence," which can be tendered in trial, manner of production of the evidence in trial, and the evidentiary value, which can be attached to such evidence. IEA also deals with the judicial presumptions, expert, and scientific evidence. There are certain other laws, which have been enacted to deal with criminality in special circumstances.

It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused is proved beyond reasonable doubt, the accused is presumed to be innocent. In certain exceptional cases, which may relate to terrorism, etc., the onus of proof has been put on the accused person, who claims to be not guilty. India has a highly developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there may be certain issues or concerns relating to the execution of the same by Police

[1] Code of Criminal Procedure, 1973, Act No. 2, Act of Parliament, 1974 (India)
[2] Indian Penal Code, 1860, Act No. 45, Act of Parliament, 1860 (India)
[3] Indian Evidence Act, 1872, Act No. 1, Act of Parliament, 1872 (India)

and implementation by Judiciary. The courts in India, particularly High Courts and Supreme Court have been proactively guarding the rights of the accused. Even Article 21[4] of the Constitution of India has been interpreted in a highly dynamic manner to protect the rights, life, and liberty of the citizens, by also incorporating the principles of natural justice at the stage of trial.

The aim of the Criminal Justice system is to punish the guilty and protect the innocent. More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused person without delay, awarding appropriate punishments to the convicted to meet the ends of justice and prevent subsequent offences.

What is Criminal Trial?

"Trial" word is not defined under CrPC. In a layman's language, "trial is an act of testing somebody or something". But in the legal sense, "trial is a process in the court of law where a judge listens to evidences and decides if somebody is guilty of a crime or not"[5]. A criminal trial is a legal proceeding where the state, represented by a prosecutor, accuses an individual of committing a crime. The accused, or defendant, is afforded the opportunity to present a defence against the charges. The trial typically involves the examination of evidence, witness testimonies, and legal arguments. The ultimate goal is to determine the defendant's guilt or innocence. If found guilty, the court imposes a sentence, which may include fines, probation, or imprisonment, depending on the severity of the offence. The trial process adheres to established legal principles to ensure a fair and impartial judgement.

Need for Restructuring Criminal Trial System

- Inefficiency in the delivery of justice: the system would take years to bring justice and has disappeared to deter criminals. The large number of guilty parties remain unpunished in a lot of cases. Mostly, on conversely, numerous innocent people stay in custody too. According to the NCRB report 67.2% of our overall prison population consists of undertrial inmates. The number of

[4] INDIA CONST. art. 21
[5]Google, https://www.google.com/search?q=WHAT+IS+MEANT+BY+TRIAL&oq=WHAT+IS+MEANT+BY+TRIAL+&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQABiABDIHCAIQABiABDIHCAMQABiABDIHCAQQABiABDIHCAUQABiABDIHCAYQABiABDIHCAcQABiABDIHCAgQABiABDIHCAkQABiABNIBCDk1NzhqMWo3qAIAsAIA&sourceid=chrome&ie=UTF-8 (last visited on June.30.2023)

undertrial prisoners has increased from 371848 in 2020 to 427165 in 2021 (as on 31st December of each year) having increase by 14.9% during this period.[6]

- The complex nature of crime: nature of crime is becoming more and more complex in terms of technological advancement.
- The acquittal rate is high in Indian Criminal Justice System.
- Inequality in justice: the rich and powerful hardly arrest, except in cases of serious crimes. The growing link between crime and politics to has added another dimension to the crime scenario.
- Reduced trust of the common man in judicial procedure due to complicated procedures and delayed justice.
- The new bill for the criminal law suggests the amendments in the existing trial system and certain steps have been taken to mitigate the existing difficulties in the trial system. The steps taken are needed to be analysed in the light of –
    - to which extent these steps can prove to remove those existing difficulties in the criminal trial system
    - that the steps taken are sufficient to address those difficulties
    - what other steps can be taken to reform trial system
- The trial system needs to be re-structure in a wholesome manner as the structure is obsolete as per the changing society and nature of crime in India.

Research Problem

The various research on this topic, mostly conducted by the law students have concentrated upon the particular aspect of the criminal trial system but has not considered the whole criminal trial system and its loopholes. Researcher has not found any study that reflect the shortcomings of whole criminal trial system and its solutions. After reviewing many research papers, journals, and articles regarding criminal trial system in India, researcher came to the conclusion that most of them have not discussed the impact of shortcomings of Indian Criminal Trial System and also have not discussed the concrete solutions for this major problem. To accomplish all those facts, I (researcher) have undergone in-depth study to recognize why criminal trial system, which is codified in well-structured manner has not able to meet the

[6] NCRB (Official Website), https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf (last visited on July.1. 2023)

requirements of the present societal needs of getting justice on time and fair manner. This study is targeted to know about the shortcomings of trial system from various perspective at ground level and suggest some practical as well as effective solutions for the same so that justice mechanism in criminal trial become fair and justice can be seen in speedy manner and also evaluate various alternatives for the ordinary trial system for the disposal of criminal matters. Hence, the topic for research is Restructuring Criminal Trial System in India.

Hypothesis

The researcher has formulated the following hypothesis: -

Indian Criminal trial system needs restructuring, although the new bill has opened a possibility for resolving certain difficulties, but some more steps needed to be taken to solve the all difficulties.

Objectives

The main objectives of the proposed research work are following: -

1. The research helps to critically evaluate the criminal trial system in India and the loopholes of criminal trial system and its impact on society.
2. To critically analysis the role police, prosecutor, defence counsel, judiciary in conducting criminal trial and analyse the reason behind the pendency of criminal cases in courts and evaluate the reasons of immediate action (pseudo justice) beyond judicial trials and lack of confidence in judiciary by the society.
3. To analyse the amendments suggested in criminal trial system under Bhartiya Nagrik Suraksha Sanhita, 2023 and suggest some amendments in the criminal trial system in India so that justice delivery system can be paced up and mitigating pendency of cases on judiciary.

Limitations

Due to the vastness of the subject the scope of the study has been limited to the trial system of criminal matters in India. While reviewing the literature, the most discussion is focused on various aspect of judicial system in India and how it can be reformed. But very few were discussed about the criminal trial system.

Another limitation of this research is that, it only focuses on the criminal trial system of India, that will through light on the speedy disposal of criminal cases, solutions for mitigating pendency of cases so that trust on judiciary would re-build again, instead of going through immediate justice beyond judicial trials or even before actual trial starts and alternatives of ordinary criminal trial procedure.

REVIWE OF LITERATURE

Research Papers:

Pathan and Goel (2021)[7], studied the loopholes and lacunas in the Indian Criminal Justice System and bifurcated into police, judge, and prison. This article focuses on the human rights of victims as well as the undertrial or prisoners in prison. The article discussed the responsibility of judge is not limited to provide justice and implementation of law but also protect and enforce human right as well as provide the relief to the victim. The article has in very precise manner discussed all the loopholes in the judicial proceedings such as limitation of power to arrest, late disposal of cases due to adjournment of cases, lack of sensitisation in judges, due caution in granting or denying bail, remand provision should be cautiously applied by judges.

Krishnan and Kumar (2011)[8], the study provides the current state of Indian Criminal Justice System. Beginning in 1979, the Indian Supreme Court referring the American Constitution's Sixth Amendment, held that defendants had a fundamental right to a speedy trial. The authors with the help of the then data about pendency of cases in India (State wise) throws light on how the situation is worse in India. It also gives a comparative study of pendency of cases and lack of speedy trial in USA and India and on the basis of statistics, the authors have discussed that the condition of pendency of cases is worse than USA. The authors under this article talks about the jurisprudence of speedy trial in very detailed manner and also discussed that lack of speedy

[7]Azim Pathan & Udita Goel, *"Criminal Justice Reforms in India",* SSRN Online (June 23, 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872956

[8] Jayanth K. Krishnan and C. Raj Kumar, "*Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trial in India in Comparative Perspective*", Articles by Maurer Faculty, Paper 155 (2011) http://www.repository.law.indiana.edu/facpub/155?utm_source=www.repository.law.indiana.edu%2Ffacpub%2F155&utm_medium=PDF&utm_campaign=PDFCoverPages

trial led to pendency of cases and ultimately lead to denial of justice. The article also suggests some reforms in the Criminal Justice system and mainly focuses on the trial system of India.

Sastry V.V.L.N. (2019)[9], in this work the author has discussed about the influence of media on trial system in India. The author has discussed about the trend of trial by media has increased overtime and media trial is influencing fair trial and right to privacy of both victim and of accused.

Thilagaraj R. (2013)[10], in this article the author has describe the whole machinery involved in the criminal justice system i.e., government, police, media, judges, advocates, etc. The author has described the functions of court, public prosecutors in trial system and also provides insight about the Lok Adalat and Alternative dispute resolution (ADR).

Sahu and Singh (2022)[11], the authors in this article have made an attempt to introduce our criminal justice system. The researcher focuses on reforms recommended by the Law Commission and the researcher have suggested some important changes or modifications required in the prevailing criminal justice system in India to make more streamlined and strengthened.

Singh and Singh (2020)[12], the article focuses on the problem faced by the prosecutor in helping the prosecution as well as the judicial system in exercising the delivery of justice. The researchers have tried to find out the reasons for the delay in justice and what is the solution for that and have also given certain suggestion to make the judicial system more effective.

Randhawa and Singh (2016)[13] has analysed on various challenges faced by Indian prosecution system. This paper contributes towards finding the challenges which are obstacle for smooth functioning of Indian prosecution system. The paper concludes the solutions to these challenges which the department faces in the proper adjudication of the routine duties in cooperative efforts of criminal justice administration in India, with a contribution towards smooth functioning of Indian prosecution system. In this paper the challenges faced at the

[9] V.V.L.N. Sastry, *Influence of Trial by Media on the Criminal Justice System in India* , Walden Dissertations and Doctoral Studies Collection, Walden University (2019), https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=8084&context=dissertations

[10] R. Thilagaraj, *Criminal Justice System in India*, Handbook of Ancient Criminology 199 (2013)

[11] Meena Ketan Sahu and Chandi Prasad Khamari, *Criminal Law Reforms in India: A Study on Past, Present and Future*, 21 YMER ISSN: 00440477, 451 (2022)

[12] Rajesh Singh and Rekha Kumari Singh, *Criminal Justice System in India: Need for Systematic Changes*, 8 Research Chronicier (2020)

[13] Gurpuneet Singh Randhawa & D.J. Singh, *Analysis of Challenges Faced by Indian Prosecution System*, 3 IJRHSS, 1 (2016)

dispersal of duties by the Prosecution department with the three other important wings of criminal justice administration that is Police, Judiciary and Prison are systematically analysed and some suitable remedies eliminating these challenges and improving the inter departmental corporation for the better criminal justice administration in India.

Berti and Tarabout (2013)[14] has discussed about the history of the Indian legal order shows an intricate construction of institutions and codifications which relate to the British legal system, to Hindu or Muslim traditions (partly reinvented), and, since independence, to various international interactions. The question of culture – local, religious, or national – has thus regularly been at the core of juristic concerns, whether to leave place to aspect of personal law according to more or less reified representations of cultural use of the Courts.

Debroy Bibek (2008)[15] studied about the judicial reform and deliberately in focus and not normative, barring this introductory first section and the concluding one. With this introduction, the structure of the rest of the paper follows.

Bhat and Mir (2020)[16] has discussed about the criminal justice system consists of the police, prosecution, courts and correctional administration. Each of these components in the system is to work in synchronization with each other. The harmonization among these organs will only make the success of the criminal justice system possible. The prosecution system which is considered as the crucial wing of the system has to play its role independent from any outside influence. The paper concludes with some valuable suggestions, which will contribute to the smooth functioning of the criminal justice system in general and the prosecution system in particular.

Kaur Parminder (2020)[17] has analysed fair trial and fair investigation are the part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, the minimum requirement of the rule of law is that the investigation must be fair, transparent, and judicious. Thus, the paper analysed the contribution and status of investigating agencies in embracing various modes of investigation.

[14] Daniel Berti & Gilles Tarabout, *Criminal Proceedings in India and the Question of Culture: An Anthropological Perspective*, HAL Open Science, 193-206 (2013)
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[17] Parminder Kaur, *Fair Investigation: Backbone of Criminal Justice System*, 3 The Haryana Police Journal, 33-39 (2020)

Dabral Sambeeta (2019)[18] the author has discussed about the historical development of criminal justice system in India. This paper has discussed about the nature of criminal justice system adopted by India and the comparison with other countries. Till ancient, Mughal, British period and combined with the present scenario has been discussed in a precise manner.

Vishwakarma Shalinee (2021)[19] has discussed about the founding ideas of judicial principles of criminal justice system in India. An effective criminal justice system is essential for an orderly society and the protection of human rights.

Books:

Pramod Kumar Singh (2023)[20] in his book named, "A to Z of Criminal Trial", the author has elaborated the whole criminal trial system in India. The book has been divided into 25 chapters which has elaborated all the aspects of trial which is both elaborated in the bare act of CrPC and also the practical aspect of the trial system in the conventional way. The author has also provided the important words and phrases in the CrPC and also the models form of drafting.

K L Vibhute (2019)[21] the author in this book has provided remarkable illustrative inputs to all those interested in the field of criminal law and on the other covers landmark judgement which revolve around the emerging trends in the area besides covering reforms suggested by the Law Commission and other bodies. In this book the offences are dealt within an academic framework and the legislative framework.

Justice B. R. Gavai (2020)[22] the author in this book has analysed various reforms made under the criminal justice system by legislature through amendments. The approach applied in this book is doctrinal and provides some suggestive measures for the criminal judicial system.

Narendra Kumar (2021)[23] the author in this book is detailed compilation of myriad procedures and practices fundamental to criminal law in order to render a comprehensive and

[18] Sambeeta Dabral, *Development of Criminal Justice System in India – A Historical Perspective*, 6 JETIR, 704-710 (2019)
[19] Shalinee Vishwakarma, *The Scope of Changes in the Criminal Law System in India: To Eradicate the Non-Effective Provision in Statue,* Linguistics and Culture Review, 2457-2469 (2021)
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[22] Justice B.R. Gavai, Revisiting Reforms in the Criminal Justice System in India" (Thomson Reuters 2020)
[23] Narendra Kumar, Key to Criminal Court Practices and Procedures (Universal Publishing, 6th ed., 2021)

a broad perspective of the concerned subject, the book elucidates basic procedural aspects of criminal court practice and their probable remedies.

NOTEWORTHY CONTRIBUTIONS

Gupta H.P. (2003)[24] assessed the criminal trial system of India along with evidence given during the trial proceeding. Not only criminal trial system as given under CrPC but also evidence during trial as per Indian Evidence Act has also been discussed in this work in a consolidated manner. The whole procedure during the trial with supporting landmark and latest judgements of Supreme Courts and various high courts has been efficiently presented. The work is an analytical work and adopted doctrinal approach. The work only focuses on the trial procedure as given under the law and not given any suggestions for its reform.

The literature on trials in the Indian criminal justice system is extensive, covering various aspects such as procedural laws, challenges, and reforms. Scholars like Upendra Baxi and Madhava Menon have explored the complexities of criminal trials in India, emphasizing the need for judicial reforms to enhance efficiency and fairness. Issues such as delays, witness protection, and role of technology in the courtroom have been widely discussed. Additionally, reports from organisations like Law Commission of India provides valuable insights into proposed reforms. Overall, the literature reflects a multifaceted examination of the Indian criminal justice system, addressing both its strengths and areas in need of improvement.

Baxi Upendra (2020)[25] explored the central concept of fair trial as an integral aspect of human right in the administration of criminal justice. He points out that a threshold human rights task is to convert the present administration of criminal justice (ACJ) into a system of criminal justice (CJS). He also looks at some conceptual ingredients of a fair trial as laid down in a catena of judgements by the apex court and various high courts and suggest the steps towards human rights oriented CJS reforms.

Justice V.S. Malimath Committee Report (2003)[26] the Malimath Committee, formed in 2000 under the chairmanship of Justice V.S. Malimath, aimed to suggest reforms in the criminal

[24] H P Gupta, Aapradhik Parikshan-Hindi- "Criminal Trial" (Dwivedi & Co.,1st ed., 2003)
[25] Upendra Baxi, *Human Rights in the Administration of Criminal Justice: A Concept of Fair Trial*, Volume 19, Annual Journal of the National Human Right Commission (2003)
[26] Justice V. S. Malimath Committee Report (2003), https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (last visited on Nov. 20, 2023)

justice system in India. Some key contributions include recommendations to enhance the efficiency of criminal trials, such as introducing plea bargaining, restructuring the bail system, and addressing delays in the justice delivery process. While not all the recommendations were implemented, the committee's report sparked discussions on improving the criminal trial system in the country.

Justice Verma Committee Report (2013)[27] the Verma Committee, formed in the aftermath of the Nirbhaya case in 2012, was headed by Justice J.S. Verma and had a broader focus on addressing issues related to sexual assault and crimes against women in India. The committee made significant contributions to criminal trial procedures by suggesting amendments to the criminal law to enhance the safety and security of women. Fast-Track Courts: The committee emphasized the need for fast-track courts to expedite trials in cases of sexual assault, ensuring swift justice for the victims. While the Verma Committee primarily focused on addressing sexual offenses, its recommendations had broader implications for the overall criminal trial system in India, advocating for a more victim-centric and expedited justice delivery process.

Research Gap – From the above review of literature, it is clear that the trial system in Indian Criminal Justice system has been undergone various changes. Various scholars and eminent jurist have suggested their view on reforming trial system. It is clear from the above studies that there are very limited studies conducted to know the root cause of the pendency, delayed justice, dual-victimization, witness insecurity, etc. The new suggested bill on CrPC has provided welcoming steps toward addressing these issues, but the problem lies in the structure of trial system in Indian criminal justice system. The main problem lies in the structure of trial system which is still untouched under the new bill and the amendments are not new but have derived from the old principles. So, it is need of the time to restructure the trial system of Indian criminal justice system and analyse the trial system of other countries where conviction rate is high and pendency of cases is low.

RESEARCH METHODOLOGY

The research methodology of this proposed work will be doctrinal as well as empirical to find out the ground situation related to the topic. It includes doctrinal study which is conducted through various secondary sources such as books, journals, e-materials, newspapers, law commission reports, etc. It includes empirical study which is conducted through questionnaire,

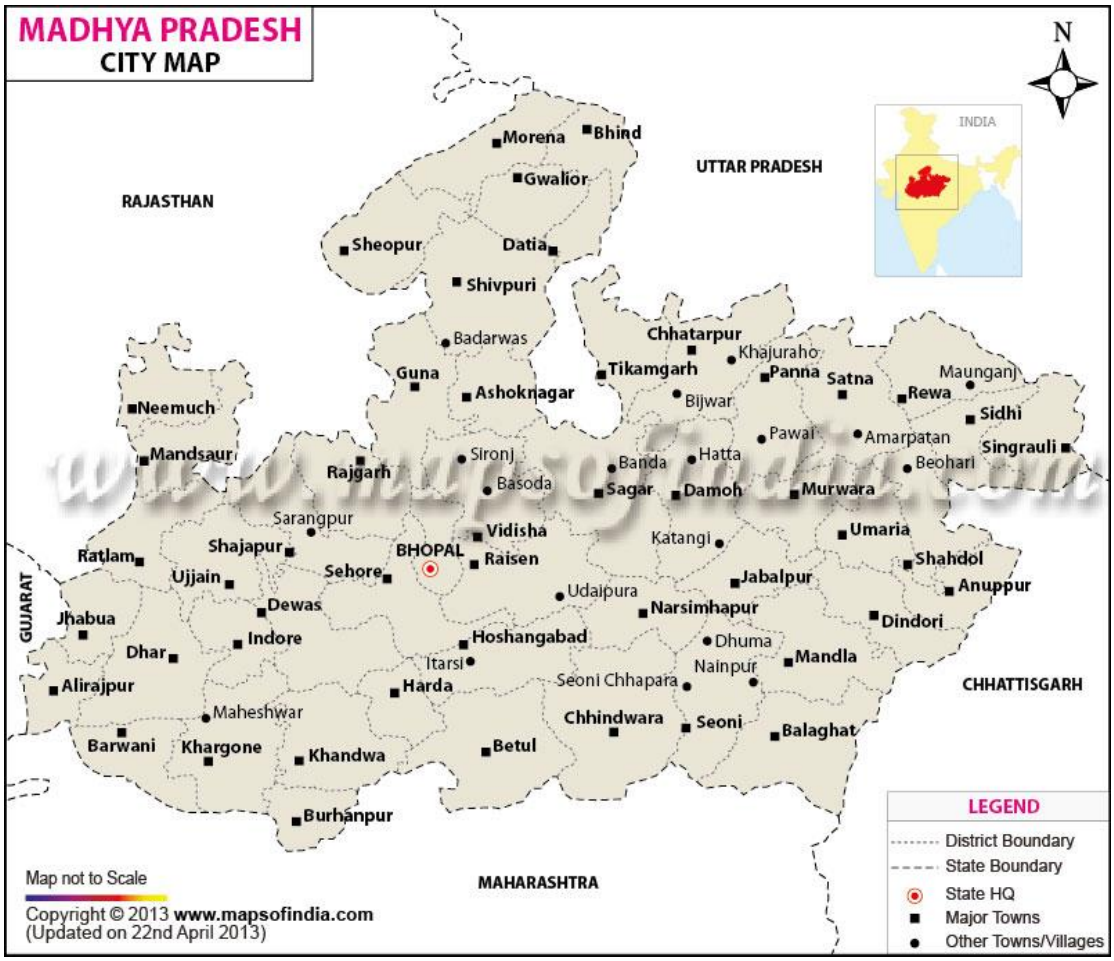
[27] Justice Verma Committee Report (2013), https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary (last visited on Nov. 19, 2023)

interview, and online modes of obtaining the required information, opinions and facts collected by various sections of people like judges, lawyers, litigants, students, police, academicians, and public. The researcher has always referred to various statutory laws and law commission report of India, etc. to meet the necessary information of secondary data for the thesis.

The area of study is the trial system of Indian criminal justice system, under which there are numerous courts in India where trial is conducted, but the researcher will collect data from trial courts of Madhya Pradesh only. The present study demands the use of both methods mentioned above. To find out the desired outcome of the study it has become mandatory to approach the courts and their concerned persons directly, to sense the struggle they are making. To extract information from the respondents, the researcher will employ different techniques such as:

a) Interview: An interview can be thought of as a guided conversation between a researcher and respondent.
b) Questionnaire: It consists of a number of questions printed or typed in a definite order on a form or set of forms.
c) Schedules: In this enumerator along with schedules, go to respondents, put them the questions from the proforma in the order the questions are listed.
d) Sampling: -
    - Sample for the study – Convenient Sampling
      When population elements are selected for inclusion in the sample base on the ease of access, it can be called convenience sampling.[28]
    - Universe of the study – The present study will be carried out on the trial courts and concerned persons in Madhya Pradesh (MP). It is infinite, as some of the respondents have infinite in number for example Victims, Accused, etc. The respondents of the universe are categorised into 7 categories- Judges, Advocates, Prosecutors, Victim, Accused, Witness, and Police.

[28]C.R. Kothari, Research Methodology (Methods and Techniques), 2nd Edition, 15 (New Age International Publisher 1990)



- Sample frame – 5 cities of MP according to the geographical location of the state- east, west, centre, north and south of the state.

S.No.	NAME OF CITIES	Geographical Location of MP
1.	Jabalpur	East
2.	Indore	West
3.	Gwalior	North
4.	Chhindwara	South
5.	Sagar	Centre

- Size of Sample – 3 respondents from each category (7) from each city (5) i.e., 105 (5*7*3).

S.No.	RESPONDENT	CATEGORY

1.	Judge	➢ DJ/ADJ ➢ CJM ➢ JMFC (at least 7 years of experience)
2.	Advocate	➢ Senior Advocate in District Court ➢ Advocate with 10 years' experience ➢ Advocate with 7 years' experience
3.	Prosecutor	➢ DP ➢ AGP (Assistant Government Prosecutor) ➢ ADPO
4.	Victim	➢ Victim of Heinous crime ➢ Victim of serious crime ➢ Victim of petty crime (others)
5.	Accused	➢ In Jail (undertrial) ➢ Undertail but not in jail ➢ Convicted
6.	Police	➢ SP / DSP ➢ 2 Investigating Officers (IO)
7.	Witness	➢ According to the offence and readiness to give information of respondent (any 3)
	TOTAL [5 (states)* 7 (respondents)* 3 (category)]	**105**

- Area of Research – Madhya Pradesh

EXPECTED OUTCOME OF THE PROPOSED WORK

Academic – The result of the study would help in carrying on further research by the future scholars or academicians in understanding the trial system of India and psychology of various stakeholder i.e., of judiciary, police, investigating agencies, society, lawmakers, advocates, academicians, and law students. Study

would help the academicians to recommend to bring changes in the prevailing laws on trial system in India and hold seminars with different stakeholders to create awareness about the need for restructuring the trial system. The study will be based on detailed survey from different sections of the society and stakeholders; hence it would help the academicians to better understand the concept of trial system and need for its restructuring.

Professional – The professionals who take active participation in the trial system would also agree that the trial system in India is not appropriate and needed reforms so that the trial system serves what it is meant to be i.e., justice (especially on the right time). The study would help to differentiate between the strong points and weak point in the trial system of India. This study would help the professionals to realize their true duty towards the society and motivate them to take steps for the restructuring trial system, as the study would reveal the actual loopholes and suggest the practical solutions in the trial system. The study will also strengthen the core ethics among the professionals.

Social – The society with the help of this study would be able to understand the present trial system in India and the reasons behind the need of restructuring. It will bring awareness in the society as the justice delivery system in criminal matters ha greater impact on the society and it also affect the law and order of the society as we have seen in the cases of Nirbhaya Gang Rape case and Hyderabad gang rape case where accused were encountered and the society were celebrating it.

The study will be based on professional experiences of various professionals and also case study of various criminal trials. The study will be useful and intent to inform and educate the future researchers about the trial system and needed reforms. The study would definitely impact the whole society as it is not the personal matter but the matter concerning whole nation.

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